

ESTTA Tracking number: **ESTTA244248**

Filing date: **10/22/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|--|
| Proceeding | 91186373 |
| Party | Defendant Weather Decision Technologies, Inc. |
| Correspondence Address | Stephen G. Janoski Roylance, Abrams, Berdo & Goodman, LLP 1300 19th Street NW, Suite 600 Washington, DC 20036-1649 UNITED STATES |
| Submission | Answer |
| Filer's Name | Stephen A. Straub |
| Filer's e-mail | sgjdocketing@roylance.com, ssstraub@roylance.com |
| Signature | /Stephen A. Straub/ |
| Date | 10/22/2008 |
| Attachments | Answer to 91186373.pdf (14 pages)(119266 bytes) |

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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In re Application of: :

WEATHER DECISION TECHNOLOGIES, INC. :

Serial No.: 77/193,495 :

Filed: May 30, 2007 :

Mark: CLEARPOINT HD WEATHER :

Published: May 13, 2008 :

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PEERSAT, :

Opposer, :

v. : Opposition No. 91186373

WEATHER DECISION TECHNOLOGIES, INC., :

Applicant. :

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APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES

Applicant, Weather Decision Technologies, Inc., hereby sets forth its Answer to the Notice of Opposition filed by Opposer, PeerSat, and states as follows:

1. Applicant denies that PeerSat is the record owner of U.S. Registration No. 3,086,331 for WEATHER HD and denies as false the allegations of Paragraph (1) of the Notice of Opposition asserted by Opposer, PeerSat.

2. Applicant denies that PeerSat is the record owner of U.S. Registration No. 3,161,100 for HD WEATHER and denies as false the allegations of Paragraph (1) of the Notice of Opposition asserted by Opposer, PeerSat.
3. Applicant denies that Roscoe M. Moore III has standing alleged or implied in the Notice of Opposition, and including but not limited to Paragraphs (1) and (2) of the Notice of Opposition to file the Notice of Opposition or to be a party to the subject opposition, or both, since PeerSat, and not Roscoe M. Moore III, filed in the United States Patent and Trademark Office Trademark Trial and Appeal Board (hereinafter, "Board") on June 9, 2008 a ninety (90) day extension of time though and until September 10, 2008 to file the subject opposition, and which extension request was granted to PeerSat also on June 9, 2008. Copies of PeerSat's June 9, 2008 extension request and the Board's June 9, 2008 grant therefore are enclosed hereto as Exhibits 1 and 2 respectively.
4. Applicant admits that it is a corporation with a business address that includes North Hamilton Street, P.O. Box 855, Middleburg, Virginia 20118. Applicant's business address as reflected in the records of the United States Patent and Trademark Office actually is 5 North Hamilton Street, P.O. Box 855, Middleburg, Virginia 20118.
5. Opposer alleges as grounds for the Notice of Opposition "Section 2(d) of the Act, 15 U.S.C. 1052(2). The applicant's mark is likely to cause confusion." Opposer has failed to allege that Opposer's mark is likely to cause confusion with any mark, including but not limited to any purported mark of Opposer, PeerSat. Applicant denies any and all allegations, implicit or otherwise, that Opposer's mark is likely to cause confusion, mistake, or to deceive under Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. §1052(d).

6. Opposer improperly claims and asserts the power and authority of the United States Patent and Trademark Office Director under Section 18 of the Trademark Act of 1946, as amended, 15 U.S.C. §1068 to apparently and implicitly allege refusal of registration of Applicant's mark. Applicant denies any and all allegations, implicit or otherwise, that Opposer is the United States Patent and Trademark Office Director, or has authority to refuse of registration, or both. Further answering, Applicant denies any and all allegations directed-to any final refusal of registration of Applicant's mark.

7. Applicant is without knowledge that Opposer has any "filed marks" in the United States Patent Office or in any state trademark office, and therefore Applicant denies as false Opposer's allegations in its first "Whereas" Paragraph that Opposer "filed for its marks and brought its marks into use." Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations in the first "Whereas" Paragraph of the Notice of Opposition, which appear to be false statements of fact, and therefore denies those allegations.

8. Whether or not Roscoe M. Moore III is the purported owner of U.S. Registration No. 3,086,331 for WEATHER HD alleged in the second "Whereas" Paragraph of the Notice of Opposition is irrelevant since PeerSat, and not Roscoe M. Moore III, is the Opposer. Further answering, the records of the United States Patent and Trademark Office indicate that Opposer is not the owner of U.S. Registration No. 3,086,331. However, since such records may not be complete, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of second "Whereas" Paragraph of the Notice of Opposition and therefore denies those allegations.

9. Whether or not Roscoe M. Moore III is the purported owner of U.S. Registration No. 3,161,100 for HD WEATHER alleged in the third "Whereas" Paragraph of the Notice of Opposition is irrelevant since PeerSat, and not Roscoe M. Moore III, is the Opposer. Further answering, the records of the United States Patent and Trademark Office indicate that Opposer is not the owner of U.S. Registration No. 3,161,100. However, since such records may not be complete, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of third "Whereas" Paragraph of the Notice of Opposition and therefore denies those allegations.

10. Whether or not Roscoe M. Moore III has the purportedly used WEATHER HD alleged in the fourth "Whereas" Paragraph of the Notice of Opposition is irrelevant since PeerSat, and not Roscoe M. Moore III, is the Opposer. Further answering, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of fourth "Whereas" Paragraph of the Notice of Opposition and therefore denies those allegations.

11. Whether or not Roscoe M. Moore III has the purportedly used HD WEATHER alleged in the fifth "Whereas" Paragraph of the Notice of Opposition is irrelevant since PeerSat, and not Roscoe M. Moore III, is the Opposer. Further answering, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of fifth "Whereas" Paragraph of the Notice of Opposition and therefore denies those allegations.

12. Applicant admits that the subject application was filed on the basis of *intent-to-use* in the United States Patent and Trademark Office for the services identified therein. Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of any

remaining allegations in sixth “Whereas” Paragraph of the Notice of Opposition, and therefore denies those allegations.

13. Applicant admits that the subject application was filed on the basis of *intent-to-use* in the United States Patent and Trademark Office for the services identified therein. Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of any remaining allegations in seventh “Whereas” Paragraph of the Notice of Opposition, and therefore denies those allegations.

14. Applicant admits that the subject application was filed on the basis of *intent-to-use* in the United States Patent and Trademark Office for the services identified therein. Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of any remaining allegations in eighth “Whereas” Paragraph of the Notice of Opposition, and therefore denies those allegations.

15. Applicant admits that the subject application was filed on the basis of *intent-to-use* in the United States Patent and Trademark Office for the services identified therein. Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of any remaining allegations in ninth “Whereas” Paragraph of the Notice of Opposition, and therefore denies those allegations.

16. Applicant is without knowledge that Opposer has any “filed marks” in the United States Patent Office or in any state trademark office, and Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the tenth “Whereas” Paragraph of the Notice of Opposition, which appear to be false statements of fact, and therefore denies those allegations.

17. Applicant denies that Opposer is the record owner of U.S. Registration No. 3,086,331 for WEATHER HD and denies as false the allegations in the eleventh "Whereas" Paragraph of the Notice of Opposition.

18. Applicant denies that Opposer is the record owner of U.S. Registration No. 3,086, 331 for WEATHER HD. Applicant also denies that Opposer is the record owner of U.S. Registration No. 3,161,100 for HD WEATHER. Further answering, Applicant denies as false the allegations in the twelfth "Whereas" Paragraph of the Notice of Opposition.

19. Applicant denies that Opposer is the record owner of U.S. Registration Nos. 3,086,331 and 3,161,100, and denies as false the allegations in the fourteenth "Whereas" Paragraph of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief can be granted.
2. The Notice of Opposition should be denied under the doctrine of unclean hands.
3. Opposer has not and will not suffer any injury or damage by the registration of Applicant's mark for the services recited in U.S. Application No. 77/193,495.
4. No *likelihood of confusion* exists or is possible for numerous and compelling reasons, and including the fact the Notice of Opposition should be summarily denied because the alleged service mark WEATHER HD, the subject of U.S. Registration No. 3,086,331, comprises, in its entirety, terms which are and/or have become generic and incapable of functioning as a registrable service mark denoting the source or origin of any and all services identified as "electronic delivery of images, pictures, video, and other data describing or displaying the earth's weather and environment which can be used for

weather forecasting and weather reporting via a global computer network,” in International Class 38; and “displaying images, pictures, video, and other data of others describing or displaying the earth’s weather and environment which can be used for weather forecasting and weather reporting via a global computer network,” in International Class 42, or which convey and/or have come to convey a generic meaning for goods and services in a wide range of fields and industries, and including multimedia, computer, Internet video, science, technology and weather, and which cannot be exclusively appropriated to the exclusion of Applicant or others in the multimedia, computer, Internet video, science, technology and weather fields and related industries.

5. No *likelihood of confusion* exists or is possible for numerous and compelling further reasons, and including the fact the Notice of Opposition should be summarily denied because the alleged service mark claimed service mark HD WEATHER, the subject of U.S. Registration No. 3,161,100, comprises, in its entirety, terms which are and/or have become generic and incapable of functioning as a registrable service mark denoting the source or origin of any and all services identified as “electronic delivery of images, pictures, video, and other data describing or displaying the earth’s weather and environment which can be used for weather forecasting and weather reporting via a global computer network,” in International Class 38; and “displaying images, pictures, video, and other data of others describing or displaying the earth’s weather and environment which can be used for weather forecasting and weather reporting via a global computer network,” in International Class 42, or which convey and/or have come to convey a generic meaning for goods and services in a wide range of fields and

industries, and including multimedia, computer, Internet video, science, technology and weather, and which cannot be exclusively appropriated to the exclusion of Applicant or others in the multimedia, computer, Internet video, science, technology and weather fields and related industries.

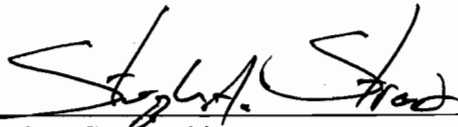
6. The Notice of Opposition also should be summarily denied because Opposer lacks standing, in part attributable to the irrefutable material fact that Opposer's allegations are based on erroneous, exclusive claims in and to the terms HD and WEATHER, which have been in extensive use as descriptive or generic identifiers of goods and services in a wide range of fields and industries, and including multimedia, computer, Internet video, science, technology and weather.

WHEREFORE, Applicant respectfully requests that this Opposition be dismissed and that the Application be passed for registration.

Respectfully submitted,

WEATHER DECISION TECHNOLOGIES, INC.

Dated: October 22, 2008

By: 

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Application of: :

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Opposer, :

v. : Opposition No. 91186373

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Applicant. :

-----X

EXHIBIT 1

This is Exhibit 1 to the foregoing Applicant's Answer, Affirmative Defenses, and Counterclaims.

ESTTA Tracking number: **ESTTA216385**

Filing date: **06/09/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|----------------------------|------------------------------|
| Applicant: | TrueNorth Global Inc. |
| Application Serial Number: | 77193495 |
| Application Filing Date: | 05/30/2007 |
| Mark: | CLEARPOINT HD WEATHER |
| Date of Publication | 05/13/2008 |

First 90 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, PeerSat, 1111 Army Navy Dr, Suite 1203, Suite 1203, Arlington, VA 22202, UNITED STATES, a LLC, organized under the laws of USA, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 06/12/2008. PeerSat respectfully requests that the time period within which to file an opposition be extended until 09/10/2008.

Respectfully submitted,
/Roscoe M Moore III/
06/09/2008

Roscoe M Moore III

President

PeerSat

1111 Army Navy Dr, Suite 1203

Arlington, VA 22202

UNITED STATES

rmoore@peersat.com

703-553-0270

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Application of: :

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Opposer, :

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WEATHER DECISION TECHNOLOGIES, INC., :

Applicant. :

-----X

EXHIBIT 2

This is Exhibit 2 to the foregoing Applicant's Answer, Affirmative Defenses, and Counterclaims.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Roscoe M Moore III
PeerSat
1111 Army Navy Dr, Suite 1203
Arlington, VA 22202

Mailed: June 9, 2008

Serial No.: 77193495
ESTTA TRACKING NO: ESTTA216385

The request to extend time to oppose is granted until
9/10/2008 on behalf of potential opposer **PeerSat**

Please do not hesitate to contact the Trademark Trial and
Appeal Board at (571)272-8500 if you have any questions
relating to this extension.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to
oppose, notices of opposition, petition for cancellation, notice
of ex parte appeal, and inter partes filings are now available
at <http://estta.uspto.gov>. Images of TTAB proceeding files can
be viewed using TTABVue at <http://ttabvue.uspto.gov>.

TRADEMARK TRIAL AND APPEAL BOARD RULE CHANGES

The USPTO has issued new rules pertaining to TTAB
proceedings. Parties are urged to familiarize themselves
with the new rules.

Among other changes, for any notice of opposition filed on
or after November 1, 2007, the new rules require an opposer
to provide proof of service of the notice of opposition
upon the applicant at the time the notice of opposition is
filed. Trademark Rule 2.101. (Parallel amendments to
Trademark Rule 2.111 require a petitioner to include proof
of service of the petition for cancellation.) Service may
be made by any of the means set out in Trademark Rule

2.119(b). A certificate of service is adequate proof of service; service by a process server is not necessary. A notice of opposition (or petition for cancellation) filed without a certificate of service will not be instituted.

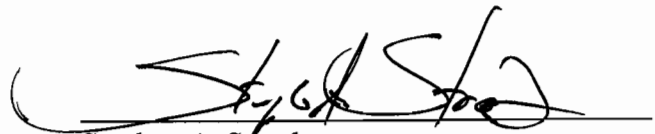
The notice of final rulemaking and a chart summarizing the changes contained in the notice are available for viewing on the TTAB web page:

www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf

www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing Applicant's Answer and Affirmative Defenses was served by first class mail, postage prepaid, this 22nd day of October, 2008, upon PeerSat 1111 Army Navy Drive, Suite 1203, Arlington, Virginia 22202, the Opposer.


Stephen A. Straub